

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD ARNEZ HUNTER,

Defendant-Appellant.

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UNPUBLISHED

June 30, 2005

No. 252595

Wayne County Circuit

LC No. 03-008866-01

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for manslaughter, MCL 750.321, and assault with intent to do great bodily harm, MCL 750.84. Defendant was sentenced to 5 ½ to 15 years in prison for the manslaughter conviction, and nineteen months to ten years in prison for the assault with intent to do great bodily harm conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

Defendant’s convictions arise out of a fight with his girlfriend, Deborah McDonald’s two sons, Marcellais McDonald, aged nineteen, and Jeremy McDonald, aged seventeen. Deborah testified that defendant pushed her during a fight in front of her daughter and two sons. Marcellais confronted defendant who then pushed Marcellais. Jeremy testified Marcellais responded by punching defendant in the face and a fight ensued. Jeremy testified he tried to break up the fight and administered a choke hold on defendant when defendant had Marcellais backed against the side of the house. Jeremy admitted to choking defendant for about fifteen seconds before throwing him on the ground. Defendant then got up and ran upstairs.

At trial, defendant testified that when Jeremy and Marcellais appeared during his argument with Deborah, Jeremy threatened to beat him and appeared to reach into his back pocket while Marcellais struck him in the head, twice. Defendant later testified Marcellais had tried to hit him with a tire iron. Defendant claimed the boys began to punch him, butted his head into a door, and Jeremy choked him. Both Jeremy and Deborah denied defendant’s testimony that Deborah was yelling to her sons to “kill him.” Jeremy put the defendant in a choke hold. Consequently, defendant retrieved a carpenter knife from his pants pocket and began jabbing the knife toward the boys. Defendant testified he saw another knife on the ground which he claimed was a kitchen knife that Marcellais had stolen from the family home days before the incident.

Defendant testified Jeremy was holding this knife at some point during the fight. Jeremy testified that he never put his hand in his back pocket and that neither he nor Marcellais had weapons.

When the fighting stopped, Marcellais had sustained four stab wounds: two to his chest, one to his back, and one to his right leg. The stab wounds to his chest penetrated his heart and lungs, causing death. The medical examiner testified the stab wounds were consistent with an upward stabbing motion. Jeremy had also been cut on his stomach and arms

The court doubted the credibility of defendant's version of events because he did not indicate until the end of cross-examination that he had seen Marcellais and Jeremy with weapons. The court held that defendant had created a high risk of death or great bodily harm by pushing Deborah in front of her sons, but mitigated the charge of second degree murder to voluntary manslaughter for emotional excitement of the moment. The court further held that defendant had not intended to kill Jeremy when he stabbed him, and thus, convicted him of assault with intent to cause great bodily harm.

## II. STANDARD OF REVIEW

Defendant challenges the trial court's findings of fact and claims that the lower court incorrectly applied the law in determining whether defendant acted in self-defense. Findings of fact by the trial court may not be set aside unless clearly erroneous. MCR 2.613(C); *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002); *People v Lyons (On Remand)*, 203 Mich App 465, 468; 513 NW2d 170 (1994). "The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made." *Lyons, supra* at 468. In applying this principle, this Court defers to the trial court's superior position to observe the credibility of the witnesses who testify during the bench trial. MCR 2.613(C); *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000). In contrast, this Court reviews a trial court's conclusions of law de novo. *People v Farrow*, 461 Mich 202, 209; 600 NW2d 634 (1999).

## III. ANALYSIS

Defendant argues that the trial court erred in concluding that defendant did not meet the requirements for the defense of self-defense. Once a defendant introduces evidence of self-defense, the prosecutor bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. CJI2d 7.20; *People v Elkhoja*, 251 Mich App 417, 443; 651 NW2d 408 (2002), vac'd in part on other grds 467 Mich 916 (2003). The Michigan Supreme Court, in *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002), stated as follows:

As a general rule, the killing of another person in self-defense by one who is free from fault is justifiable homicide if, under all the circumstances, he honestly and reasonably believes that he is in imminent danger of death or great bodily harm and that it is necessary for him to exercise deadly force. The necessity element of self-defense normally requires that the actor try to avoid the use of deadly force if he can safely and reasonably do so, for example by applying nondeadly force or by utilizing an obvious and safe avenue of retreat. [*Id.* (footnotes omitted).]

In the present case, the trial court held that defendant was not entitled to the defense of self-defense since he was the initial aggressor. Three witnesses testified that defendant pushed his girlfriend, Deborah McDonald, to the ground, and into a wooden fence, in the plain view of her two sons. Furthermore, there was evidence that defendant pushed Marcellais when Marcellais confronted defendant about defendant's argument with Deborah. In this regard, the evidence presented at trial supports the trial court's finding that defendant was the initial aggressor.

Defendant argues that he is not precluded from arguing self-defense as the initial aggressor since Jeremy and Marcellais responded to his use of non-deadly force with deadly force. The two factual circumstances in which an initial aggressor can regain the right to self-defense are (1) where the initial aggressor retreats and communicates his retreat, and (2) where a non-deadly aggressor is met with deadly force. *Riddle, supra* at 128-130; CJI2d 7.16.

The record showed that Marcellais responded by punching defendant in the face, which lead to their fight. Jeremy attempted to break up the affray by administering a choke hold on defendant while defendant had Marcellais backed up against the side of the house. Witness testimony established that the boys did not have weapons, and that there were no verbal threats on defendant's life.

Defendant, however, testified that the boys were armed with weapons, he only stabbed the boys in response to being choked, Deborah told the boys to kill him, and he was just fighting for survival. The trial court, sitting as the trier of fact, chose to discredit defendant's testimony as exaggerated and self-contradicting. Accordingly, the lower court accepted the prosecution's theory that defendant was the initial aggressor who did not respond to a sudden, violent, deadly attack by the boys.

Indeed, the medical testimony showed that Marcellais suffered four stab wounds: two to his chest, one to his back, and one to his right leg. Considering that Marcellais suffered a stab wound in his back, it was impossible for trial court to accept as true both Jeremy's testimony that he administered the choke hold when defendant had Marcellais backed up against the house *and* defendant's testimony that he only began jabbing at the boys to stop Jeremy from choking him. Regarding the defendant's testimony, the trial court stated, "It was like watching Pinocchio's nose...I am disregarding almost everything the defendant said that was not verified by any other evidence because he exaggerated. He added things." The court, therefore, held that the physical evidence was inconsistent with defendant's testimony. The trial court was in a superior position to assess defendant's credibility. *Sexton, supra* at 752.

Based on this record, there is sufficient evidence to support the trial court's holding that defendant was not entitled to rely on the defense of self-defense. The trial court correctly applied the law and this Court will defer to its findings of fact where the trial court had the opportunity to observe the credibility of witnesses who testified during the bench trial. MCR 2.613(C).

Defendant also argues that the burden of proving self-defense was erroneously shifted to him. This argument is without merit. All trial testimony, including defendant's, is evidence that can be used to support a conviction. *People v Collins*, 239 Mich App 125, 132; 607 NW2d 760 (1999). Further, a prosecutor need not negate every reasonable theory of innocence, but must

prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). In this case, the trial court rejected defendant's claim of self-defense, as discussed *supra*, based on the evidence presented by the prosecution and the finding that defendant's fabrications made the prosecution's theory more believable. The trial court's decision to believe the prosecution's evidence over defendant's is not tantamount to improperly shifting the burden of proof to defendant.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello